

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

STATE OF NEW MEXICO, ex rel.,
MARCO WHITE, MARK MITCHELL,
and LESLIE LAKIND,

Plaintiffs,

vs.
COUY GRIFFIN,

Case No. D-101-CV-2022-00473

Defendant.

**PLAINTIFFS' EMERGENCY MOTION TO CONTINUE DEPOSITION OF MATTHEW
STRUCK AND REMOVE TIME LIMITS FROM DEPOSITION**

Plaintiffs respectfully move this Court for an emergency order to continue the deposition of Matthew Struck and to remove time limitations on that deposition. Plaintiffs' support for the instant emergency motion is as follows:

1. On July 2, 2022, Plaintiffs served a subpoena on Matthew Struck seeking the production of certain documents relevant to this matter by July 20, 2022. That same day, Plaintiffs also served Mr. Struck with a subpoena for a deposition to take place on July 27, 2022.
2. Matthew Struck travelled with Defendant Couy Griffin in the days leading up to January 6, 2021 and was present with Defendant at the United States Capitol on January 6, 2021. Mr. Struck served as an informal videographer for Defendant's organization Cowboys for Trump and recorded extensive amounts of video footage. This video footage documents numerous statements and actions by Defendant, which Plaintiffs intend to use at trial in this matter.

3. On July 20, 2022, Mr. Struck provided an initial production of approximately 186 video files, through a means not specified in the subpoena nor previously agreed to.
4. On July 21, 2022, July 23, 2022, and July 27, 2022, Mr. Struck belatedly produced approximately 1,500 additional video files to Plaintiffs in response to the subpoena served on him.
5. On July 27, 2022, Plaintiffs began the deposition of Mr. Struck. Mr. Stanley Woodward appeared as Mr. Struck's attorney at the deposition. During the deposition, Plaintiffs sought to authenticate approximately 100 videos produced by Mr. Struck that had been recorded in the days before, on, and after January 6, 2021. Mr. Struck was evasive in answering Plaintiffs' questions. Specifically, Mr. Struck refused to give Plaintiffs straight-forward answers on the authenticity of the videos he produced to Plaintiffs. For example, although Mr. Struck had previously testified in Couy Griffin's criminal trial that many of his video recordings were a fair and accurate depiction of the events that he recorded on January 6, 2021, during his deposition Mr. Struck debated whether any video could be said to fairly and accurately reflect any event and repeatedly invoked his Fifth Amendment privilege against self-incrimination with respect to questions relating to events or videos recorded on January 6, 2021.
6. During the deposition, Plaintiffs' counsel sought to use the deposition time efficiently by seeking testimony about groups or subsets of videos, but this proved unsuccessful because of Mr. Struck's evasiveness and clear intent to frustrate the authentication process. This ultimately required that each video be addressed one at a time. Mr. Struck refused to authenticate any of his video recordings unless he

watched the entire video first, which made the process of authenticating the recordings an exceedingly burdensome process.

7. Both on and off the record at the deposition, Mr. Struck's attorney, Stanley Woodward, stated that Mr. Struck would "stipulate to authenticity" of the relevant videos as an alternative to watching and authenticating the videos during the deposition. Mr. Woodward expressed displeasure when Plaintiffs' counsel persisted in going through each video with Mr. Struck in order to establish authenticity. Mr. Woodward frequently complained that the examination was unreasonable, and at the lunch break, Mr. Woodward threatened to improperly terminate the deposition if Plaintiffs' counsel continued going through each video individually.
8. During the lunch break, Mr. Woodward assured Plaintiffs' counsel that Mr. Struck would execute an affidavit sufficient to establish the authenticity of the video recordings. Based on Mr. Woodward's assurances, Plaintiffs' counsel agreed to move on from the authentication questions and proceeded with the deposition of Mr. Struck about other topics. Mr. Woodward then indicated that he was unavailable to attend the entire time period set for the deposition and sought to reschedule it.
9. Based on Mr. Woodward's representation that Mr. Struck would authenticate the video files through an affidavit, Plaintiffs agreed to continue the deposition to provide time for the parties to prepare and finalize the affidavit. Plaintiffs reserved the right to reopen the deposition to establish the authenticity of the records produced by Mr. Struck.

10. On July 27, 2022, shortly before the parties halted Mr. Struck's deposition for the day pursuant to the agreement about an affidavit, Plaintiffs provided Mr. Struck and his attorney a proposed affidavit for Mr. Struck to review, sign, and notarize. Mr. Woodward indicated via email that the affidavit looked fine and agreed to review the affidavit with Mr. Struck.
11. On July 29, 2022, after counsel for Plaintiffs reviewed the videos produced by Mr. Struck on July, 27, 2022, Plaintiffs provided Mr. Struck, through counsel, an updated affidavit including additional videos for authentication from the most recent production.
12. On July 30, 2022, Mr. Woodward indicated to Plaintiffs that Mr. Struck had agreed to a revised affidavit and Mr. Struck was "taking this to the bank to have notarized."
13. When Plaintiffs did not receive a notarized affidavit on July 30 or July 31, 2022, they offered on August 1, 2022 to schedule an appointment for Mr. Struck to meet with a notary virtually. Mr. Woodward agreed and provided the affidavit to the notary that day. However, Mr. Struck indicated he was unavailable to meet with the notary at the available time and did not offer any alternative option.
14. On August 2, 2022, when Plaintiffs sought again to schedule the notary appointment, Mr. Woodward indicated that Mr. Struck had decided that he would not sign the affidavit as written. After Plaintiffs offered alternate language in response to the information from Mr. Woodward, Mr. Woodward informed Plaintiffs that Mr. Struck still would not sign the affidavit.

15. Therefore, Plaintiffs respectfully request that the Court grant an emergency order to compel Mr. Struck and his attorney of choice to attend a continued deposition of Mr. Struck on Friday, August 5, 2022, at 8:00 MDT so that Plaintiffs can ask Mr. Struck all outstanding questions about the authenticity of videos produced by Mr. Struck to Plaintiffs.
16. Plaintiffs further request that the Court grant an emergency order to remove time limitations on Mr. Struck's deposition, in light of Mr. Struck's evasiveness and the number of videos that must be watched in full in order for Mr. Struck to authenticate them during the deposition. Such an order is appropriate in the given circumstances under Rule 1-030(D)(2) NMRA.
17. Due to the emergency nature of this motion, Plaintiffs request an accelerated deadline for any response to their motion of 4:00pm (Mountain Time) on Wednesday, August 3, 2022, and an emergency hearing on their motion on Thursday, August 4, 2022.

Date: August 2, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2022, the foregoing Emergency Motion to Continue Deposition of Matthew Struck and Remove Time Limits from Deposition was filed through the New Mexico Odyssey File & Serve system, which caused all counsel of record to be served by electronic means.

Defendant Griffin was served via the email address shown below.

Couy Griffin



Respectfully submitted,

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